No. 16-1432

IN THE
Supreme Court of the United States

ASHLEY SVEEN AND ANTONE SVEEN,
Petitioners,

v.

KAYE MELIN,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

BRIEF OF PETITIONERS

DANIEL DODA
DODA MCGEENEY
975 34th Ave. NW
Suite 400
Rochester, MN 55901

ADAM G. UNIKOWSKY
Counsel of Record
JAMES T. DAWSON*
JENNER & BLOCK LLP
1099 New York Ave., NW,
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

CLIFFORD W. BERLOW
JENNER & BLOCK LLP
353 North Clark St.
Chicago, IL 60654

* *Not admitted in Washington, D.C. Only admitted in Texas.*

QUESTION PRESENTED

In 2002, Minnesota enacted legislation providing, in relevant part, that "the dissolution or annulment of a marriage revokes any revocable ... beneficiary designation ... made by an individual to the individual's former spouse." Minn. Stat. § 524.2-804, subd. 1. Thus, if a person designates a spouse as a life insurance beneficiary and later gets divorced, Minnesota law provides that the beneficiary designation is automatically revoked. At least twenty-eight other states have enacted similar revocation-on-divorce statutes.

The question presented is:

Does the application of a revocation-on-divorce statute to a contract signed before the statute's enactment violate the Contracts Clause?

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Ex parte Burrus, 136 U.S. 586 (1890) 23

City of El Paso v. Simmons, 379 U.S. 497 (1965) 42, 50, 51, 53, 55

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Connecticut General Life Insurance Co. v. First National Bank of Minneapolis, 262 N.W.2d 403 (Minn. 1977) 31

Coolidge v. Long, 282 U.S. 582 (1931) 35

Coulam v. Doull, 133 U.S. 216 (1890) 41

Curtis v. Whitney, 80 U.S. (13 Wall.) 68 (1872) 48, 49

Dubois v. Smith, 599 A.2d 493 (N.H. 1991) 19

Egelhoff v. Egelhof ex rel. Breiner, 532 U.S. 141 (2001) 28

Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400 (1983) 22, 42, 55, 56, 57, 58, 59, 61

Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810) 45

Fournier v. Fournier, 376 A.2d 100 (Me. 1977) 27, 28

General Motors Corp. v. Romein, 503 U.S. 181 (1992) 20, 42

Gilfillan v. Union Canal Co. of Pennsylvania, 109 U.S. 401 (1883) 15, 44, 45

Green v. Biddle, 21 U.S. (8 Wheat.) 1 (1823) 43

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Jackson ex dem. Hart v. Lamphire, 28 U.S. 280 (1830) 45, 46

Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470 (1987) 59, 60

Knoeller v. Uihlein (In re Estate of Uihlein), 68 N.W.2d 816 (Wis. 1955) 36-37

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In re Estate of Lamparella, 109 P.3d 959 (Ariz. Ct. App. 2005) 32

Larsen v. Northwestern National Life Insurance Co., 463 N.W.2d 777 (Minn. Ct. App. 1990) 19

Laumann v. Laumann, 400 N.W.2d 355 (Minn. Ct. App. 1987) 22

Lemke v. Schwarz, 286 N.W.2d 693 (Minn. 1979) 40

Louisiana v. City of New Orleans, 102 U.S. 203 (1880) 46-47

Maynard v. Hill, 125 U.S. 190 (1888) 24, 25

Midland Realty Co. v. Kansas City Power & Light Co., 300 U.S. 109 (1937) 20

Minnesota Mutual Life Insurance Co. v. Ensley, 174 F.3d 977 (9th Cir. 1999) 31

Poland v. Nalee (In re Estate of George), 265 P.3d 222 (Wyo. 2011). 37

Producers' Transportation Co. v. Railroad Commission, 251 U.S. 228 (1920) 20

In re Estate of Rock, 612 N.W.2d 891 (Minn. Ct. App. 2000) 19

Rothman v. Rothman, 320 A.2d 496 (N.J. 1974) 28

Stillman v. Teachers Insurance & Annuity Ass'n College Retirement Equities Fund, 343 F.3d 1311 (10th Cir. 2003) 29, 33, 56, 57

Swanson v. Swanson, 583 N.W.2d 15 (Minn. Ct. App. 1998) 23

Texaco, Inc. v. Short, 454 U.S. 516 (1982) 49

Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819) 3, 12, 23, 24

Union Dry Goods Co. v. Georgia Public Service Corp., 248 U.S. 372 (1919) 20

United States Trust Co. of New York v. New Jersey, 431 U.S. 197 (1977) 55

Vance v. Vance, 108 U.S. 514 (1883) 46

Vasconi v. Guardian Life Insurance Co. of America, 590 A.2d 1161 (N.J. 1991) .. 18, 19, 34, 58

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Wisconsin Department of Revenue v. William Wrigley, Jr., Co., 505 U.S. 214 (1992) 43

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CONSTITUTIONAL PROVISIONS AND STATUTES

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Ariz. Rev. Stat. Ann. § 14-2804 8

Cal. Prob. Code § 21601 41

Colo. Rev. Stat. Ann. § 15-11-804 8

Fla. Stat. Ann. § 732.703 9

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Idaho Code Ann. § 15-2-804 8

Iowa Code Ann. § 598.20A 9

Mass. Gen. Laws Ann. 190B § 2-804 8
Mich. Comp. Laws Ann. § 700.2803 (2012) 36
Mich. Comp. Laws Ann. § 700.2807 8
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Tex. Fam. Code Ann. § 9.302 9
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Va. Code Ann. § 20-111.1 9
Wash. Rev. Code Ann. § 11.07.010 9
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Wis. Stat. 854.20(1)(a) 37

Wis. Stat. Ann. § 854.15 9

An Act Regarding Nonprobate Transfers on Death, H.P. 682, 128th Leg., 1st Reg. Sess. (Me. 2017) 9

Nonprobate Transfers Law of Mississippi, 2017 MS H.B. 806, § 22, 132d Leg. Sess. (Miss. 2017) 9

OTHER AUTHORITIES

24 Am. Jur. 2d *Divorce and Separation* § 456, Westlaw (database updated Nov. 2017) 18

80 Am. Jur. 2d *Wills* § 1399, Westlaw (database updated Nov. 2017) 37

4 *Couch on Insurance* § 61:10 (3d ed. 2017) 31

16 *Couch on Insurance* § 232:74 (3d ed. 2017) 31

The Federalist No. 44 (Clinton Rossiter ed., 1961) 62

http://www.uniformlaws.org/Act.aspx?title=Probate%20Code 6

2 James Kent, *Commentaries on American Law* (O. Halsted, ed. 1827) 24

John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 Harv. L. Rev. 1108 (1984) 18, 34

John J. Michalik, *Divorce: Provision in Decree that One Party Obtain or Maintain Life Insurance for Benefit of Other Party or Child*, 59 A.L.R.3d 9 (1974) 18, 22

2 *The Records of the Federal Convention of 1787* (Max Farrand ed. 1937) 43

Restatement (Second) of Contracts § 89 (1981) 32

Restatement (Third) of Property: Wills & Donative Transfers § 4.1 (1999) 7

Robert H. Sitkoff & Jesse Dukeminier, *Wills, Trusts and Estates* (10th ed. 2017) 34-35, 38

Brett R. Turner, *Equitable Distribution of Property* § 1:3, Westlaw (database updated Nov. 2017) 26

Uniform Probate Code § 2-205(1)(D) 38

Uniform Probate Code § 2-205(1)(D), cmt., para. 1, example 8 38

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Uniform Probate Code § 2-804 cmt. (amended 1997) 8, 32

Lawrence W. Waggoner, *Spousal Rights in Our Multiple-Marriage Society: The Revised Uniform Probate Code*, 26 Real Prop. Prob. & Tr. J. 683 (1992) 8

Noah Webster, *A Compendious Dictionary of the English Language* (Philip B. Grove ed., 1970) (1806) 42

Robert Whitman, *Revocation and Revival: An Analysis of the 1990 Revision of the Uniform Probate Code and Suggestions for the Future*, 55 Alb. L. Rev. 1035 (1992) 6

Alan S. Wilmit, Note, *Applying the Doctrine of Revocation by Divorce to Life Insurance Policies*, 73 Cornell L. Rev. 653 (1988) 7

OPINIONS BELOW

The decision of the Eighth Circuit (Pet. App. 1a) is reported at 853 F.3d 410 (8th Cir. 2017). The decision of the District Court (Pet. App. 9a) is unreported.

JURISDICTION

The judgment of the Eighth Circuit was entered on April 3, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Contracts Clause, U.S. Const. art. I, § 10, cl. 1, provides: "No State shall ... pass any ... Law impairing the Obligation of Contracts."

Minnesota Statute § 524.2-804, subd. 1, provides:

> **Revocation upon dissolution.** Except as provided by the express terms of a governing instrument, other than a trust instrument under section 501C.1207, executed prior to the dissolution or annulment of an individual's marriage, a court order, a contract relating to the division of the marital property made between individuals before or after their marriage, dissolution, or annulment, or a plan document governing a qualified or nonqualified retirement plan, the dissolution or annulment of a marriage revokes any revocable:
>
> (1) disposition, beneficiary designation, or appointment of property made by an individual to the individual's former spouse in a governing instrument;

(2) provision in a governing instrument conferring a general or nongeneral power of appointment on an individual's former spouse; and

(3) nomination in a governing instrument, nominating an individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian.

INTRODUCTION

In 2002, Minnesota enacted legislation providing that "the dissolution or annulment of a marriage revokes any revocable ... beneficiary designation ... made by an individual to the individual's former spouse." Minn. Stat. § 524.2-804, subd. 1. Under that statute, if a person in Minnesota designates a spouse as a life insurance beneficiary and later gets divorced, the beneficiary designation is automatically revoked. The statute is designed to implement the presumed intent of policyholders: Most people who get divorced do not intend for their ex-spouses to remain as their beneficiaries. But the statute does not prevent a divorcing policyholder from keeping an ex-spouse as a beneficiary despite their divorce. The policyholder need only contact the insurer after the divorce to add the ex-spouse back to the policy.

This case presents the question of whether applying a revocation-on-divorce statute to a life insurance policy purchased before the statute's enactment violates the Contracts Clause. The facts are

straightforward. Mark Sveen married Respondent Kaye Melin in 1997. In 1998—before Minnesota adopted the relevant revocation-on-divorce provision in 2002—Mark Sveen designated Respondent as the primary beneficiary of his life insurance policy. The couple divorced in 2007 and Mark Sveen died in 2011. Minnesota's revocation-on-divorce statute—if applied according to its terms—requires that Respondent's status as Mark Sveen's beneficiary be revoked in light of their divorce. As a result, the statute requires that the policy proceeds go to Petitioners, Mark Sveen's children from a prior relationship who are the contingent beneficiaries named on his life insurance policy.

In the decision below, however, the Eighth Circuit held that Minnesota's revocation-on-divorce statute violates the Contracts Clause as applied to insurance policies purchased prior to the statute's enactment. In so doing, the Eighth Circuit did not hold that the statute impaired *Respondent*'s contractual rights—she had none, as she did not sign the contract. Rather, it held that the statute impaired *Mark Sveen*'s contractual rights by retroactively changing his beneficiary designation.

That decision was wrong. Most fundamentally, Minnesota's revocation-on-divorce statute is an exercise of the State's sovereign authority to regulate divorce. As Chief Justice Marshall explained, the Contracts Clause "never has been understood to restrict the general right of the legislature to legislate on the subject of divorces." *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 629 (1819). Thus,

even before the enactment of Minnesota's statute, divorce courts had the power to determine the effect of divorce on beneficiary designations. Minnesota's statute simply regulates the exercise of that power by providing a default rule for interpreting divorce decrees. The Contracts Clause provides no basis for interfering with a State's sovereign power to amend its divorce laws.

Even if the States did not have sweeping authority over divorce, Minnesota's statute still would be constitutional because it does not "impair[]" any "Obligations" within the meaning of the Contracts Clause. Minnesota's statute does not interfere with the policyholder's payment of premiums or the insurer's payment of proceeds. Rather, it affects the identity of the beneficiary—the unilateral choice of the policyholder, which is of no interest to the insurer. The insurer's only obligation is to proffer the life insurance proceeds and, if a dispute arises, pay them into a court registry. That obligation does not change if a statute alters the beneficiary's identity.

Furthermore, Minnesota's statute establishes a mere default rule that construes divorce as an exercise of the policyholder's option to alter a beneficiary designation. If a policyholder wants to keep his ex-spouse as beneficiary, a simple letter to the insurer would do the trick. Given that the statute leaves intact the policyholder's right to designate the beneficiary of his choosing, it does not impair any obligation.

Even if Minnesota's statute impaired the insurer's obligation, the impairment would be insufficiently substantial to implicate the Contracts Clause. A long

line of this Court's cases, dating back to the early Republic, hold that the mere requirement of preparing and filing a document is not a sufficient impairment of a contractual obligation to implicate the Clause, even if that requirement did not exist at the time the contract was signed. That line of cases makes this case straightforward: The policyholder's minimal burden of re-designating his ex-spouse as beneficiary cannot yield a Contracts Clause violation.

Critically, revocation-on-divorce statutes do not interfere with reliance interests. Virtually no one buys a life insurance policy in reliance on the absence of a revocation-on-divorce statute. Indeed, *invalidating* Minnesota's statute would be more likely to interfere with reliance expectations than upholding it. When Mark Sveen and Respondent negotiated their divorce settlement, the revocation-on-divorce statute was already on the books, and provided a background rule under which the beneficiary designation would be revoked unless the settlement provided otherwise. It is ironic that Respondent now invokes Mark Sveen's constitutional right to freedom of contract—at a time when he cannot share his point of view—as a mechanism to override the parties' freely-negotiated divorce settlement, which, under Minnesota law, should have revoked the beneficiary designation.

Even if Minnesota's statute substantially impaired contractual obligations, it would still be constitutional under this Court's modern Contracts Clause jurisprudence. This Court has adopted a highly deferential approach to the Contracts Clause, upholding statutes so long as they are a reasonable

means of attaining a legitimate end. Revocation-on-divorce statutes easily satisfy that test. This Court has scrutinized statutes to a greater extent when they involved contracts signed by the State or contracts that reflected the influence of special interests. But neither of those concerns arises in this case. Thus, the Court should not override the sound judgment of the Minnesota legislature.

STATEMENT

A. Statutory Background

This case concerns the constitutionality of Minnesota's revocation-on-divorce statute as applied to life insurance policies in force when the statute was enacted. Minnesota's revocation-on-divorce statute implements Section 2-804 of the Uniform Probate Code ("UPC"), a model code developed by the National Conference of Commissioners on Uniform State Laws in an effort to "update[] and simplif[y] most aspects of state probate law." *See* http://www.uniformlaws.org/Act.aspx?title=Probate%20Code.

Revocation-on-divorce statutes are a variation on an ancient theme. The law has long treated changed circumstances in an individual's life as automatically nullifying previously made bequests. At common law, "a man's will was revoked upon his marriage and the subsequent birth of issue, and a woman's by her subsequent marriage." *See* Robert Whitman, *Revocation and Revival: An Analysis of the 1990 Revision of the Uniform Probate Code and Suggestions for the Future*, 55 Alb. L. Rev. 1035, 1039 n.31 (1992) (citations omitted). Such default rules came about

because it "was thought that the average testator would have desired revocation in these circumstances." *Id.*

As divorce became more common in the United States, state legislatures expanded that common law rule to divorce. Early revocation-on-divorce statutes generally applied only to wills. The first version of the UPC, promulgated in 1969, provided that "[i]f after executing a will the testator is divorced or his marriage annulled, the divorce ... revokes any disposition or appointment of property made by the will to the former spouse." UPC § 2-508 (pre-1990 version); *accord Restatement (Third) of Property: Wills & Donative Transfers* § 4.1 (1999). Most States have adopted UPC § 2-508 or similar legislation. *See* Alan S. Wilmit, Note, *Applying the Doctrine of Revocation by Divorce to Life Insurance Policies*, 73 Cornell L. Rev. 653, 653 n.2 (1988) (collecting statutes). Like their common law ancestors, these statutes reflect the principle that "a divorce should wipe the slate clean as to the divorced spouse, without the testator having to go to the time and expense of making a new will. We can be sure that in almost every instance a divorced person does not desire a bequest to the former spouse to remain in effect." *Bloomer v. Capps (In re Estate of Bloomer)*, 620 S.W.2d 365, 366 (Mo. 1981).

In 1990, the Uniform Probate Code extended this principle from probate assets disposed of through a will ("probate assets") to assets disposed of through other revocable instruments ("nonprobate assets"), "such as revocable inter-vivos trusts, life-insurance and retirement-plan beneficiary designations, [and]

transfer-on-death accounts." UPC § 2-804 cmt. "The theory of this section," *id.*, was that "the increased usage of will substitutes, such as revocable trusts," meant that the traditional revocation-on-divorce statutes did "not expressly cover[] all of the arrangements that are functionally equivalent to wills," Lawrence W. Waggoner, *Spousal Rights in Our Multiple-Marriage Society: The Revised Uniform Probate Code*, 26 Real Prop. Prob. & Tr. J. 683, 690, 692 (1992).

The current Section 2-804 of the UPC for revocable nonprobate assets thus mirrors the traditional revocation-on-divorce rule for probate assets in UPC § 2-508. It provides that "the divorce or annulment of a marriage ... revokes any revocable ... disposition or appointment of property made by a divorced individual to his [or her] former spouse in a governing instrument," while defining the "[d]isposition or appointment of property" to include "any ... benefit to a beneficiary designated in a governing instrument ... executed by the divorced individual before the divorce or annulment of his [or her] marriage to his [or her] former spouse." UPC § 2-804(a)(2), (a)(4), (b). To date, fifteen states have adopted this provision in nearly identical form.[1] Several others have adopted

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[1] Alaska Stat. Ann. § 13.12.804; Ariz. Rev. Stat. Ann. § 14-2804; Colo. Rev. Stat. Ann. § 15-11-804; Haw. Rev. Stat. Ann. § 560:2-804; Idaho Code Ann. § 15-2-804; Mass. Gen. Laws Ann. 190B § 2-804; Mich. Comp. Laws Ann. § 700.2807; Minn. Stat. Ann. § 524.2-804 subd. 1; Mont. Code Ann. § 72-2-814; N.J. Stat. Ann. § 3B:3-14; N.M. Stat. Ann. § 45-2-804; N.D. Cent. Code Ann. § 30.1-10-04; S.C. Code Ann. § 62-2-507; S.D. Codified Laws § 29A-2-804; Utah Code Ann. § 75-2-804.

substantially similar statutes[2] And at least two other states are considering adopting similar legislation.[3]

The scope of UPC § 2-804 is limited in three significant respects. First, it applies "[e]xcept as provided by the express terms of a governing instrument." Thus, if an insurance policy expressly requires that the beneficiary designation not change in the case of a divorce, the statute does not apply.

Second, it applies "[e]xcept as provided by" a "court order" or a "contract relating to the division of the marital estate." Thus, if the parties expressly state in their marital estate settlement that the beneficiary designation will not be revoked, or the divorce court inserts such a provision into the divorce decree, the statute does not apply. The statute applies only when the divorce decree, and any agreement between the parties, are silent.

Third, the statute applies only to "revocable" beneficiary designations. This means that if the ex-spouse has a vested right to life insurance—such that the spouse is not contractually permitted to change it—the statute has no effect. It also means that the

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[2] Ala. Code § 30-4-17; Fla. Stat. Ann. § 732.703; Iowa Code Ann. § 598.20A; Nev. Rev. Stat. Ann. § 111.781; N.Y. Est., Powers & Trusts Law § 5-1.4; Ohio Rev. Code Ann. § 5815.33; 20 Pa. Stat. and Cons. Stat. Ann. § 6111.2; Tex. Fam. Code Ann. §§ 9.301, 9.302; Va. Code Ann. § 20-111.1; Wash. Rev. Code Ann. § 11.07.010; Wis. Stat. Ann. § 854.15.

[3] An Act Regarding Nonprobate Transfers on Death, H.P. 682, 128th Leg., 1st Reg. Sess. (Me. 2017); Nonprobate Transfers Law of Mississippi, 2017 MS H.B. 806, § 22, 132d Leg. Sess. (Miss. 2017).

policyholder can re-designate his ex-spouse as the beneficiary, if he so wishes. Thus, the revocation-on-divorce statute supplies a default rule, which the policyholder can override merely by alerting the insurer.

In April 2002, following unanimous votes in both houses of the Minnesota State Legislature, the Governor of Minnesota signed into law Minnesota Statute § 524.2-804, which implements Section 2-804 of the UPC.

B. Factual and Procedural Background

Mark Sveen purchased a revocable life insurance policy from Metropolitan Life Insurance Company ("MetLife") in 1997. Pet App. 2a. That same year, he married Respondent Kaye Melin and designated her as the primary beneficiary. *Id.* He named Petitioners Ashley Sveen and Antone Sveen, his children from a previous relationship, as contingent beneficiaries. Pet. App. 2a.

As noted above, Minnesota enacted its revocation-on-divorce statute in 2002. Mark Sveen and Kaye Melin divorced in 2007 and Mark Sveen died four years later. Pet. App. 3a, 10a. Mark Sveen never changed the beneficiary designations on the life insurance policy. *Id.*

Shortly after Mark Sveen's death, MetLife filed an interpleader action in the United States District Court for the District of Minnesota to determine who should receive the policy proceeds. Pet App. 3a. Petitioners and Respondent filed cross-claims for the money. *Id.*

The District Court ruled that Minnesota's revocation-on-divorce statute operated to revoke Respondent's beneficiary status and therefore granted summary judgment to Petitioners. Pet. App. 15-16a. The District Court rejected Respondent's claim that applying the revocation-on-divorce statute would violate the Contracts Clause, noting that "[t]he test for whether a state law unconstitutionally impairs a contract is a stringent one" and that "the Minnesota beneficiary-revocation statute is not an unconstitutional impairment of contracts in this case." Pet. App. 14a.

The Eighth Circuit reversed, reasoning that the application of Minnesota's revocation-on-divorce statute would violate the Contracts Clause if applied to a policy signed before that statute was enacted. Pet. App. 4a-5a, 7a-8a. In so holding, the Eighth Circuit considered itself bound by its previous opinion in *Whirlpool Corp. v. Ritter*, 929 F.2d 1318 (8th Cir. 1991), which held that Oklahoma's nearly identical revocation-on-divorce statute violated the Contracts Clause because it frustrated the policyholder's contractual rights and expectations with respect to beneficiary designations. Pet. App. 4a-5a. The panel recognized that *Whirlpool* had been criticized by both the Tenth Circuit and the Joint Editorial Board for the Uniform Probate Code. Pet. App. 7a. The panel nonetheless concluded that *Whirlpool* "foreclose[d] any conclusion other than that the [Minnesota revocation on-divorce] statute is unconstitutional when applied retroactively." Pet. App. 8a.

SUMMARY OF ARGUMENT

The application of a revocation-on-divorce statute to a life insurance policy purchased before the statute's enactment does not violate the policyholder's rights under the Contracts Clause.

I.A. Revocation-on-divorce statute are a permissible exercise of a State's sovereign authority over divorce. When spouses file for divorce, the divorce court is vested with broad authority to divide the parties' assets and sever the parties' relationship. As such, even in States without revocation-on-divorce statutes, divorce decrees routinely revoke beneficiary designations. Revocation-on-divorce statutes merely provide a default rule for construing divorce decrees that are otherwise silent on the effect of the divorce on a life insurance beneficiary designation. The Contracts Clause does not withdraw a State's sovereign authority to adjust its laws governing the interpretation of divorce decrees.

I.B. The history of the Contracts Clause confirms that revocation-on-divorce statutes are constitutional as applied to existing life insurance policies. As Chief Justice Marshall explained, the Contracts Clause "never has been understood to restrict the general right of the legislature to legislate on the subject of divorces." *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 629 (1819). Indeed, this Court has upheld the constitutionality of a statute that out-and-out divorced a couple. It follows that a statute that merely prescribes one consequence of a divorce decree is constitutional as well.

I.C. This Court should reject Respondent's position because it would impair States from amending their divorce laws—even prospectively. In this case, for example, the divorce took place years after the revocation-on-divorce statute was enacted, yet Respondent insists that the Constitution requires the divorce court to apply the law that was in place at the time the insurance policy was purchased. Private contracts should not prevent States from updating their divorce laws.

II.A. Revocation-on-divorce statutes do not impair any obligation of the insurer. In the event of a life insurance dispute, the insurer's obligation is to pay the policy proceeds to the court registry, and allow the court to decide the proper beneficiary. That obligation is the same before and after the enactment of the revocation-on-divorce statute. A statute that changes the identity of the beneficiary may affect the outcome of the court proceeding, but it does not affect the *insurer*'s obligation.

II.B. The foregoing analysis makes sense because it ensures that, for Contracts Clause purposes, beneficiary designations in insurance policies are treated the same as beneficiary designations in wills. The Contracts Clause should not distinguish between beneficiary designations in probate and nonprobate assets, particularly in light of the modern growth of nonprobate transfers.

II.C. Federalism considerations support upholding States' right to regulate post-death bequests, regardless of whether those bequests occur via probate or nonprobate transfers. Respondent's position would

potentially invalidate at least three other types of State statutes—"slayer" statutes, statutes regulating the treatment of adopted children in bequests, and statutes guaranteeing a statutory share of an estate to a spouse. Yet invalidating such statutes would be counterintuitive and entirely disconnected from the Contracts Clause's purposes.

III. Revocation-on-divorce statutes do not impair contractual obligations because they merely provide a default rule. If the policyholder wants his ex-spouse to be the beneficiary, he need only re-designate the ex-spouse as the beneficiary. Thus, the revocation-on-divorce statute does not interfere with the policyholder's contractual right to designate the beneficiary of his choice. Rather, it merely construes a divorce as the exercise of the contractual right to change the beneficiary, which is not an impairment of a contractual obligation.

IV.A. Even if revocation-on-divorce statutes impair contractual obligations, the impairment would not be substantial. This Court has long held that only substantial impairments of contractual obligations implicate the Contracts Clause. This longstanding view is consistent with the text and history of the Clause.

IV.B. The burden of re-designating an ex-spouse as a life insurance beneficiary is not a substantial impairment. A long line of this Court's cases has held that the requirement of filing a document does not substantially impair contractual obligations, even if that requirement did not exist at the time of contracting. For instance, this Court has upheld a statute providing that a bondholder's failure to object

to a settlement would be deemed to be the equivalent of express assent. The Court observed that "[i]f he does not wish to abandon his old rights and accept the new, all he has to do is to say so in writing to the president of the company." *Gilfillan v. Union Canal Co. of Pa.*, 109 U.S. 401, 406 (1883). Likewise, this Court has upheld multiple statutes that imposed recording obligations, even when those obligations did not exist at the time of contracting. These cases are dispositive: they establish that the paperwork obligation of re-designating an ex-spouse as beneficiary does not implicate the Contracts Clause.

IV.C. Revocation-on-divorce statutes do not interfere with reliance expectations. It is almost impossible to imagine a scenario in which a person purchases a life insurance policy in reliance on the absence of a revocation-on-divorce statute. Indeed, invalidating revocation-on-divorce statutes would likely interfere with reliance interests to a greater extent than the statutes themselves. For all we know, Mark Sveen did not change his beneficiary designation precisely *because* Minnesota's revocation-on-divorce statute rendered such a change unnecessary. Thus, awarding the proceeds to Respondent—in the name of vindicating Mr. Sveen's own purported Contracts Clause rights—might actually interfere with Mr. Sveen's expectations.

V.A. Even if revocation-on-divorce statutes substantially impaired contractual obligations, they would still be constitutional. This Court's modern Contracts Clause cases have adopted an exceedingly deferential standard under the Contracts Clause,

upholding State laws when statutes advance legitimate public purposes via reasonable means. Revocation-on-divorce statutes, which create a default rule of revocation in an effort to vindicate the presumed intent of divorcing spouses, satisfy that lenient test.

V.B. Revocation-on-divorce statutes do not present the political process concerns underlying the Contracts Clause. The historic purpose of the Contracts Clause was to protect against the prospect of special interests pressuring the legislature to release them from the obligations of unfavorable contracts. Yet neither insurers nor policyholders have any incentive to lobby the legislature to enact a revocation-on-divorce statute: Insurers have no interest in who gets the proceeds, while policyholders can change beneficiary designations without going to the legislature. The Court should not adopt an interpretation of the Contracts Clause that is so far removed from its purposes.

ARGUMENT

The application of Minnesota's revocation-on-divorce statute to a life insurance policy purchased before the statute's enactment does not violate the Contracts Clause.

Respondent does not contend that Minnesota's statute violates her own rights under the Contracts Clause. Nor could she, given that she was not a party to the contract at issue here; the insurance policy was a contract between the insurer and Mark Sveen. Rather, Respondent contends that the revocation-on-divorce statute unconstitutionally impaired Mark Sveen's contractual right to have the funds paid to Respondent

upon his death.

As explained below, that argument fails for several reasons. Revocation-on-divorce statutes are a permissible exercise of the State's sovereign authority over divorce. They do not impair, much less substantially impair, the policyholder's contractual rights. And even if they were a substantial impairment, they would still be constitutional because they are a reasonable means of advancing legitimate state interests. The Eighth Circuit's judgment should therefore be reversed.

I. REVOCATION-ON-DIVORCE STATUTES ARE A VALID EXERCISE OF STATES' SOVEREIGN AUTHORITY OVER DIVORCE.

When spouses get divorced, a state court issues a decree that severs the parties' legal relationship. The State has the sovereign authority to regulate the effect of divorce decrees, and Minnesota's revocation-on-divorce statute falls within that sovereign authority.

A. Revocation-on-Divorce Statutes Are an Exercise of the State's Regulatory Authority Over Divorce Courts, Which a Spouse Cannot Nullify Through a Private Contract.

Minnesota's revocation-on-divorce statute is an exercise of the State's police power over divorce, which Respondent may not evade via the Contracts Clause.

Divorce courts have "broad powers to distribute property in order to achieve an equitable distribution,

and to distribute both marital and nonmarital property to achieve an equitable division upon the dissolution of a marriage." 24 Am. Jur. 2d *Divorce and Separation* § 456, Westlaw (database updated Nov. 2017). Life insurance policies are one species of marital property that may be divided. John J. Michalik, *Divorce: Provision in Decree that One Party Obtain or Maintain Life Insurance for Benefit of Other Party or Child*, 59 A.L.R.3d 9 (1974) ("[A] decree in a divorce suit may properly contain a provision as to the disposition of insurance policies upon the life of the husband, in connection with either the award of alimony or the division of the property of the parties."). Indeed, "[f]or many couples, life insurance is, apart from their home, the largest single estate-planning device that they possess." *Vasconi v. Guardian Life Ins. Co. of Am.*, 590 A.2d 1161, 1163 (N.J. 1991); *see* John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 Harv. L. Rev. 1108, 1110 (1984).

Thus, in all States—regardless of whether they have revocation-on-divorce statutes—divorce decrees routinely address the fate of beneficiary designations. Revocation-on-divorce statutes simply create an easily administrable default rule governing how divorce decrees will be construed. In States without revocation-on-divorce statutes, there is constant litigation over whether language in a particular divorce decree is clear enough to effectuate a revocation of life insurance beneficiary designations; some courts conclude that generic language is sufficient, while others demand clearer language or evidence of the parties' specific intent. *Compare, e.g.*, *Vasconi*, 590

A.2d at 1166 (decree specifying that party relinquished "'any claim on the other party of any kind whatsoever'" revokes beneficiary designation) (citation omitted), *with, e.g., Dubois v. Smith*, 599 A.2d 493 (N.H. 1991) (holding similar language insufficient to revoke beneficiary designation and finding insufficient evidence of spouses' intent to justify reforming decree). Indeed, in Minnesota, prior to the revocation-on-divorce statute's enactment, courts had reached conflicting conclusions on whether virtually identically-worded provisions of divorce decrees revoked beneficiary designations. *Compare Larsen v. Nw. Nat'l Life Ins. Co.*, 463 N.W.2d 777, 779-80 (Minn. Ct. App. 1990) (provision stating "[e]ach party may be awarded all right, title and interest in those life insurance policies covering his or her respective life" sufficient to revoke beneficiary designation based on specific facts showing parties' intent), *with In re Estate of Rock*, 612 N.W.2d 891, 895 (Minn. Ct. App. 2000) (provision awarding each party "all right, title and interest in and to any and all ... savings plans" insufficient to revoke beneficiary designations in view of surrounding facts). Minnesota's revocation-on-divorce statute forecloses the need for litigation on whether particular divorce decrees revoke beneficiary designations by setting a default rule for all decrees: The beneficiary designation is revoked, unless the decree specifies otherwise.

Two strands of this Court's Contracts Clause jurisprudence establish that a State may amend its divorce laws in this manner. *First*, this Court has held that the Contracts Clause does not inhibit a State from amending its laws governing traditional State

functions, even if those amendments affect existing contracts. As Justice Holmes explained, "[o]ne whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject-matter." *Hudson Cty. Water Co. v. McCarter*, 209 U.S. 349, 357 (1908). For instance, parties cannot prevent the State from imposing rates on common carriers, even if those rates displace rates negotiated through private agreements. *See Producers' Transp. Co. v. R.R. Comm'n*, 251 U.S. 228, 232 (1920) ("A common carrier cannot by making contracts ... prevent or postpone the exertion by the state of the power to regulate the carrier's rates and practices. Nor does the contract clause of the Constitution interpose any obstacle to the exertion of that power."); *accord Midland Realty Co. v. Kansas City Power & Light Co.*, 300 U.S. 109, 113 (1937); *Union Dry Goods Co. v. Ga. Pub. Serv. Corp.*, 248 U.S. 372, 374-77 (1919). There is a sound practical justification for this principle: Were it not the case, the Contracts Clause would "severely limit the ability of state legislatures to amend their regulatory legislation" because "[a]mendments could not take effect until all existing contracts expired, and parties could evade regulation by entering into long-term contracts." *General Motors Corp. v. Romein*, 503 U.S. 181, 190 (1992).

This principle establishes that the Constitution does not constrain a State from enacting a revocation-on-divorce statute that applies to existing life insurance policies. Minnesota's statute is part and parcel of a

traditional State function: the issuance of divorce decrees. The statute has no effect until the divorcing spouses affirmatively seek a state-issued divorce decree. When the spouses do seek such a decree, the statute serves as a tool for construing that decree. Thus, revocation-on-divorce statutes do not intrude on private arrangements. To the contrary, they regulate a decision that *already* was up to the divorce court—*i.e.*, the effect of divorce on the spouses' life insurance policies. Of course, in some cases, divorcing spouses negotiate a divorce settlement that is incorporated by the divorce court into the decree. In those cases, however, the statute becomes relevant only when the parties do not include an express term in their settlement resolving the fate of the insurance policy—and it does not take effect until the issuance of the state-issued decree severing the parties' relationship. Far from substituting the prerogative of private citizens with the prerogative of the State, therefore, the statute adopts a default rule regarding the effect of the State's exercise of one of its traditional functions, issuing divorce decrees. That simply does not implicate the Contracts Clause.

Indeed, in many States, not only may the divorce decree revoke a beneficiary designation, divorce courts can force a divorcing spouse to *maintain* his ex-spouse as a life insurance beneficiary in order to ensure her financial stability in the event of his death. Although there is some variation in state law on this issue, numerous courts have "held or recognized ... that the court in a divorce proceeding has the general and inherent power to require a husband to maintain

insurance on his life for the benefit of his former wife." Michalik, *supra*, 59 A.L.R.3d 9 (collecting cases). In Minnesota, courts possessed this power even before the enactment of Minnesota's revocation-on-divorce statute. *See, e.g., Laumann v. Laumann*, 400 N.W.2d 355, 360 (Minn. Ct. App. 1987). Such provisions are more intrusive than revocations of beneficiary designations because they prevent the divorcing spouse from exercising his contractual right to change the beneficiary—even if he wants to. Yet such provisions routinely appear in divorce decrees. It follows that States should have the more modest power to enact a statute providing that a decree revokes the beneficiary designation, unless the divorce court—or the policyholder—prefers otherwise.

Second, this Court has held that when a person signs a contract in a field that is heavily regulated, he cannot reasonably expect regulations to remain static. In *Veix v. Sixth Ward Building & Loan Ass'n of Newark*, 310 U.S. 32 (1940), for example, the Court rejected a Contracts Clause challenge to a statute regulating the withdrawal of shares from building and loan associations. It explained that building and loan associations had long been highly regulated, *id.* at 37; thus, when the contracting party "purchased into an enterprise already regulated in the particular to which he now objects, he purchased subject to further legislation upon the same topic," *id.* at 38. *Accord Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 416 (1983) ("Price regulation existed and was foreseeable as the type of law that would alter contractual obligations").

Divorce is the ultimate example of a regulated field. When parties file for divorce, the divorce court has complete power to determine the fate of all the parties' assets—including their right to receive income from contracts like annuities and insurance policies. *See supra* at pp. 17-18; *Swanson v. Swanson*, 583 N.W.2d 15, 18 (Minn. Ct. App. 1998) (annuities are divisible in divorce). Given that the State has plenary power over the disposition of assets in divorce, it is foreseeable that the State may adjust its statutes exercising that plenary power. The Contracts Clause does not confer a right that a State's divorce laws will remain static.

B. History Confirms That the Contracts Clause Does Not Restrict a State's Ability to Determine the Effect of a Divorce Decree.

The history of the Contracts Clause confirms that it does not bar a State from enacting legislation regulating the effect of a divorce decree on the divorcing spouses' relationship.

This Court has long held that "[t]he whole subject of the domestic relations of husband and wife . . . belongs to the laws of the states, and not to the laws of the United States." *Ex parte Burrus*, 136 U.S. 586, 593-94 (1890). Applying that principle, this Court has long indicated that divorce legislation should be reviewed through a deferential lens. This Court's seminal decision in *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819) (Marshall, C.J.), is most famous for Chief Justice Marshall's expansive interpretation of the Contracts Clause. But even Chief Justice Marshall took pains to note that the

Contracts Clause "never has been understood to restrict the general right of the legislature to legislate on the subject of divorces." *Id.* at 629. Likewise, James Kent's *Commentaries on American Law* declared that it "has generally been considered that the state governments have complete control and discretion" over the dissolution of marriages, and "in ordinary cases the constitutionality of the laws of divorce, in the respective states, is not to be questioned." 2 James Kent, *Commentaries on American Law* 89-90 (O. Halsted, ed. 1827).

Admittedly, neither Chief Justice Marshall nor James Kent specifically addressed statutes that set forth the effect of divorce on insurance policies; rather, they rejected the argument that divorce legislation impermissibly impaired *marriage* contracts. *Dartmouth*, 17 U.S. (4 Wheat.) at 629 ("Those acts enable some tribunals, not to impair a marriage contract, but to but to liberate one of the parties, because it has been broken by the other."); 2 Kent, *supra*, at 89-90 (similar). But their broad declarations of a State's power over divorce comfortably encompass statutes that prescribe one consequence of a divorce decree—*i.e.*, the revocation of a beneficiary designation. Indeed, if States have the power to enact legislation severing spouses' legal relationship altogether, they surely have the lesser power to enact statutes that merely define one particular respect in which divorce decrees sever that relationship.

Maynard v. Hill, 125 U.S. 190 (1888), similarly supports Petitioners' position. In *Maynard*, the Court confirmed that a divorce conferred by the legislature

did not violate the Contracts Clause, because marriage is not a "contract" within the meaning of the Clause. *Id.* at 210. The Court emphasized that the Contracts Clause does not limit the legislature's power to regulate "the duties and obligations [marriage] creates, its effects upon the property rights of both, present and prospective, and the acts which may constitute grounds for its dissolution." *Id.* at 205. The Court further rejected the wife's argument that the divorce deprived her of property interests that would have vested if she stayed married: "A divorce ends all rights not previously vested. Interests which might vest in time, upon a continuance of the marriage relation, were gone." *Id.* at 216.

The statute in this case is a considerably lesser infringement on reliance interests than the statute in *Maynard*. The *Maynard* statute out-and-out divorced the couple—thus extinguishing a wide array of future property interests—yet the Court had no difficulty upholding it. Here, the statute merely provides that one effect of a divorce decree is to revoke beneficiary designations—which the divorce court had the discretionary authority to accomplish even before the statute's enactment. Further, the statute permits a spouse to re-designate his ex-spouse as the beneficiary if he so chooses. It should be upheld as well.

C. Practical Considerations Support Upholding States' Sovereign Authority to Regulate Divorce.

The Court should reject Respondent's argument because it would significantly impair a State's authority to amend its divorce laws.

It is important to recognize that Respondent's position would restrict States from *prospectively* amending their divorce laws. In this case, for instance, Respondent contends that the revocation-on-divorce statute is unconstitutional as applied, even though it was enacted several years *before* the parties' divorce. In Respondent's view, the divorce court was constitutionally obligated to apply the law in force at the time the policy was purchased. Respondent's position would result in marital assets being subject to a checkerboard of laws in divorce—some would be subject to the laws in force at the time of the divorce, while others would be subject to long-repealed legal regimes. The result would be considerable practical difficulties in amending divorce laws.

Consider a concrete example. In the 1970s, a "revolution happened" in American divorce law. Brett R. Turner, *Equitable Distribution of Property* § 1:3, Westlaw (database updated Nov. 2017). As of 1970, "no American common-law state had a fair and sex-neutral property division system." *Id.* The general rule was that "a 'liberal' allowance for the wife was to receive upon divorce roughly one-third of the marital estate," and "[e]qual divisions were reserved for unusual cases." *Id.* But "[b]y 1983, every common-law property state in the country had adopted a workable property division system by either statute or court decision." *Id.*

These new statutes, designed to protect divorcing wives from financial harm, frequently applied to divorces where the parties had acquired property before the statute's enactment. This was for good reason:

> Had the legislature chosen to apply the concept of equitable distribution of property only to property acquired after the Act became effective, the full impact and purposes of the new act would not have been felt for at least a generation. Such prospective application would continue the very inequity which the legislature sought to remedy and would place the present generation of married couples at a decided disadvantage in comparison with subsequent generations of married couples. Moreover, in each dissolution proceeding involving property, courts would be presented with the impracticable dilemma of applying, depending upon the acquisition date of any disputed property, differing sets of laws and policies.

Kujawinski v. Kujawinski, 376 N.E.2d 1382, 1388 (Ill. 1978) (internal citation omitted).

For two reasons, these statutes impaired vested interests to a far greater extent than revocation-on-divorce statutes. First, they significantly altered asset distribution in divorce, as opposed to merely serving a gap-filling function for decrees otherwise silent on beneficiary designations. Second, they offered no opt-out opportunity for the divorcing spouses, unlike revocation-on-divorce statutes which allow the policyholder to re-designate his ex-spouse as beneficiary. Nonetheless, state courts routinely upheld such statutes against Contracts Clause and other constitutional challenges. *See, e.g., id.* at 1387; *Bacchetta v. Bacchetta*, 445 A.2d 1194, 1197-98 (Pa. 1982); *Fournier v. Fournier*, 376 A.2d 100, 101-02 (Me.

1977); *Rothman v. Rothman*, 320 A.2d 496, 499-504 (N.J. 1974). Courts reasoned that the acquisition of property does not confer "a vested right in a particular statutory procedure governing the disposition of property upon divorce." *Fournier*, 376 A.2d at 102.

Under Respondent's position, however, those statutes would have been unconstitutional as applied to previously acquired contractual interests—and any future changes to the law of property distribution would be unconstitutional for the same reason. The Court should not adopt an interpretation of the Contracts Clause that would severely constrain the States from updating their divorce laws.

To be sure, Congress could, through its Commerce Clause authority over insurers, enact statutes regulating the effect of divorce on beneficiary designations. Indeed, Congress has exercised that power—this Court has held twice, in recent years, that federal statutes regulating insurance preempted state revocation-on-divorce laws (neither federal statute applies here). *See Hillman v. Maretta*, 569 U.S. 483 (2013) (FEGLIA); *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001) (ERISA). But Respondent's position would impose *constitutional* constraints on revocation-on-divorce statutes—even when there is no connection to interstate commerce and even when Congress *wants* to leave the decision up to the States. The Court should not constitutionalize the law of divorce in this way.

II. STATUTES AFFECTING THE DONATIVE COMPONENT OF A LIFE INSURANCE POLICY DO NOT VIOLATE THE CONTRACTS CLAUSE.

As previously explained, Minnesota's revocation-on-divorce statute implements Section 2-804 of the Uniform Probate Code. The Joint Editorial Board for the Uniform Probate Code has opined that the retroactive application of revocation-on-divorce statutes does not violate the Contracts Clause:

> A life insurance policy is a third-party beneficiary contract. As such, it is a mixture of contract and donative transfer. The Contracts Clause of the federal Constitution appropriately applies to protect against legislative interference with the contractual component of the policy. ... [T]here is never a suggestion that the insurance company can escape paying the policy proceeds that are due under the contract. The insurance company interpleads or pays the proceeds into court for distribution to the successful claimant. The divorce statute affects only the donative transfer, the component of the policy that raises no Contracts Clause issue.

Stillman v. Teachers Insurance & Annuity Ass'n College Retirement Equities Fund, 343 F.3d 1311, 1322 (10th Cir. 2003) (quoting Joint Editorial Board statement and adopting its reasoning).[4]

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[4] The Joint Editorial Board's full statement is available on PACER. Appellant's Addendum at 9, *Melin v. Sveen*, 853 F.3d 410 (8th Cir. 2017) (No. 16-1172) (docketed Mar. 2, 2016).

The Joint Editorial Board's analysis is correct. Statutes affecting the donative component of an insurance policy raise no Contracts Clause issue. Rather, they should be viewed as analogous to statutes affecting beneficiary designations in wills, which raise no Contracts Clause issues.

Notably, this argument is completely independent of the prior argument. The argument in Part I focused on divorce law, while this argument focuses on the law of beneficiary designations. Both arguments apply in this case because Minnesota's statute governs the effect of divorce law, on beneficiary designations.

A. Statutes Affecting Life Insurance Beneficiary Designations Do Not Impair Contractual Obligations.

The Contracts Clause prohibits "Law[s] impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1. The premise of Respondent's position is that a statutory change to the identity of a life insurance beneficiary is a change in the insurer's "Obligation" under the Contracts Clause.

That premise, however, is incorrect. In reality, a life insurer's obligation is to pay the proceeds to the beneficiary under state law—whomever that beneficiary may be. If there is a bona fide dispute over the identity of the beneficiary, the insurer's obligation is to initiate an interpleader action and allow the court to decide. Properly understood, the insurer's obligation is not affected by a state law that changes the beneficiary designation.

This understanding of an insurer's obligation follows

from the fact that when a life insurance policy is contested—based on a revocation-on-divorce statute, or for any other reason—the insurer has no obligation to determine the identity of the beneficiary. Rather, the insurer's obligation is to initiate an interpleader action and deposit the funds in the court registry. At that point, the insurer's obligations are discharged; determining the beneficiary is up to the court. 16 *Couch on Insurance* § 232:74 (3d ed. 2017); *see, e.g.*, *Minn. Mut. Life Ins. Co. v. Ensley*, 174 F.3d 977, 981 (9th Cir. 1999) ("Minnesota Mutual discharged any duty it owed to disburse the proceeds of the policy by filing the interpleader action and depositing the policy proceeds into the registry of the court."); *Conn. Gen. Life Ins. Co. v. First Nat'l Bank of Minneapolis*, 262 N.W.2d 403, 404 (Minn. 1977) (insurer "deposited disputed life insurance proceeds with the court and was dismissed from the proceedings"). Indeed, that is what occurred in this case.

Thus, the insurer's "obligation" was the same before and after the passage of Minnesota's statute. Before the statute, the insurer was required to give the funds to the named beneficiary unless there was a bona fide dispute, and if there was, initiate an interpleader action. After the statute, the same was true. Although the statute affects the ultimate recipient of the funds, it does not affect the *insurer's* obligation.[5]

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[5] Of course, if an insurer accidentally sends the proceeds to the wrong person, it can be liable for breach of contract. *See, e.g.*, 4 *Couch on Insurance* § 61:10. This is consistent with Petitioners' contention that the insurer's obligation is to convey funds to the beneficiary designated by State law: sending the proceeds to the

There is another doctrinal path to the same result. Respondent's position is that a change to the beneficiary alters the insurer's contractual obligations. But that cannot be right, because by that logic, any time the policyholder unilaterally changes the beneficiary, the insurer's contractual obligations are altered, without the insurer's consent. Yet black-letter contract law requires that contractual obligations cannot be altered without mutual assent. *Restatement (Second) of Contracts* § 89 (1981); *see also* UCC § 2-209. It follows that a change in beneficiary cannot constitute a change to the insurer's obligation.

B. Beneficiary Designations in Nonprobate Transfers Should Be Treated the Same Way as Beneficiary Designations in Wills.

The analysis above makes sense because it ensures that all beneficiary designations—whether in wills, trusts, or insurance policies—are treated the same way. By its terms, Minnesota Statute § 524.2-804 applies to all beneficiary designations, whether they are in a will, trust, or contract such as a life insurance policy. Indeed, the stated purpose of Uniform Probate Code §2-804 is to "unify the law of probate and nonprobate transfers." UPC § 2-804 cmt. (amended 1997).[6] It

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wrong person breaches that obligation.

[6] "Probate assets are those transferred by testate or intestate succession; non-probate assets are those transferred outside of probate, such as jointly owned property, life insurance proceeds, payable-on-death accounts or other revocable dispositions made by a divorced spouse to a former spouse before the dissolution." *In re Estate of Lamparella*, 109 P.3d 959, 961 n.1 (Ariz. Ct. App. 2005).

ensures that if a person designates a spouse in both a will and a nonprobate instrument such as an insurance policy, gets divorced, and fails to update both, the designations will be treated the same way.

Respondent's position would thwart that goal. The Contracts Clause would not bar the revocation-on-divorce statute from applying to wills predating the statute's enactment, because wills are not contracts. But the Contracts Clause would bar it from applying to insurance policies predating its enactment.

This result makes scant sense. The Constitution should not distinguish between beneficiary designations in wills and in insurance policies. The person making the designation is doing the same thing—unilaterally deciding who gets money after he dies. Of course, an insurance policy is a contract under the Contracts Clause, and a will is not. But the *reason* an insurance policy is a contract is that it involves reciprocal obligations between a policyholder and an insurer—the policyholder pays premiums, the insurer pays the proceeds—and those reciprocal obligations are unaffected by Minnesota's statute. The statute affects only the beneficiary's identity—a matter which is not negotiated, but is the policyholder's unilateral choice. The Constitution's treatment of that unilateral choice should not vary depending on whether it occurs in the context of a probate or nonprobate transfer. *Stillman*, 343 F.3d at 1322 ("That the donative transfer must be effectuated with the assistance of a party in a contractual relationship with the donor does not transmute the donative transfer into the performance of a contractual obligation. ... There is no more an

impairment of a contract than if [the decedent] had made the beneficiary designation in his will."); *Vasconi*, 590 A.2d at 1165 ("Would it not be anomalous in the extreme that the device chosen to give the insurance transfer the efficacy of a will serve to bring about a different post-divorce result in the case of the will substitute than the will itself?"); Langbein, *supra*, 97 Harv. L. Rev. at 1109 (arguing in favor of parallel treatment of beneficiary designations in probate and nonprobate transfers).

This makes even more sense when considering the ubiquity of nonprobate transfers today. Many people, upon their death, have multiple investments—for instance, bank accounts, an IRA, and a "whole" life insurance policy. Some of those assets will enter the estate and be transferred to heirs via a will; others will be transferred via a contractual beneficiary designation. *See* Langbein, *supra*, 97 Harv. L. Rev. at 1111. People often leave all their assets to the same heirs and neither know, nor care, about the precise mechanism by which the post-death transfer takes place. Yet under Respondent's position, the constitutionality of a revocation-on-divorce statute would turn on whether the transfer is probate or nonprobate.

Moreover, many people dispose of assets through revocable trusts rather than wills. In practice, revocable trusts and wills function very similarly—the difference is that post-death transfers take place via a trustee appointed through trust documents, rather than a will executor. *See* Robert H. Sitkoff & Jesse Dukeminier, *Wills, Trusts and Estates* 444-45 (10th ed.

2017). Although the Court has not resolved the constitutional status of revocable trusts, it has held generally that "trust deeds are contracts within the meaning of the contract clause of the Federal Constitution." *Coolidge v. Long*, 282 U.S. 582, 595 (1931). Given the close similarity between these instruments, it would be strange if revocation-on-divorce statutes are constitutional for wills and unconstitutional for revocable trusts.

C. Practical Considerations Support Upholding States' Authority to Regulate Beneficiary Designations.

Principles of federalism support upholding revocation-on-divorce statutes. "[T]he settlement and distribution of decedents' estates and the right to succeed to the ownership of realty and personalty are peculiarly matters of state law." *Harris v. Zion Sav. Bank & Trust Co.*, 317 U.S. 447, 451 (1943). Indeed, as previously explained, States have long treated changed circumstances in an individual's life as automatically nullifying previously made bequests. *Supra*, at pp. 6-7. Revocation-on-divorce statutes simply update those longstanding laws by applying them to divorce and non-probate transfers. *Supra*, at pp. 7-8. Given the traditional deference to States on laws governing asset succession upon death, the Court should allow States to decide how to regulate beneficiary designations.

Moreover, States have comprehensive regulatory regimes on beneficiary designations. Respondent's position would jeopardize several aspects of those regimes, yielding exceedingly counterintuitive results. To give three examples:

- *Slayer statutes.* Most States have "slayer" statutes, *i.e.*, statutes that prevent murderers from receiving the proceeds of their victims' life insurance policies. These statutes are routinely amended—for instance, in the past few years, several States have expanded them to prevent beneficiaries that commit elder abuse from receiving the proceeds of the decedent's life insurance policy. *See, e.g.*, 84 Okla. Stat. § 231 (2015); Mich. Comp. Laws Ann. § 700.2803 (2012). Under Respondent's view, these statutes violate the Contracts Clause as applied to existing policyholders, because they impair the insurer's obligation, under prior law, to give the proceeds to the abuser. Respondent's position would yield the unattractive prospect of abusers asserting the constitutional rights of their victims, under a theory of third-party standing, to obtain the insurance proceeds.

- *Adoption statutes.* At common law, a reference to "children" in a beneficiary designation did not encompass adopted children unless the designator was the adoptive parent. Thus, the phrase "my brother's children" would exclude adoptees. Courts reasoned that "[t]he status resulting from adoption proceedings is not a natural one," and one "has no moral right to impose upon his brother the status of an uncle to his adopted son." *Knoeller v. Uihlein (In re*

Estate of Uihlein), 68 N.W.2d 816, 820 (Wis. 1955). Today, this rule is viewed as anachronistic—an adoptee is as much a person's child as a biological child—and States have enacted statutes providing that adoptees are considered "children" in wills and life insurance policies. *E.g.*, Wis. Stat. 854.01(2), 854.20(1)(a). Yet under Respondent's position, such statutes would be unconstitutional as applied to existing policies because the insurer's contractual obligations would be "impaired." This result is very odd, given that such statutes have nothing to do with the reciprocal relationship between policyholder and insurer.

- *Spousal support statutes.* Most States have "statutory share" statutes requiring decedents to give a certain share of their estate to their spouses (typically one-third), and overriding any wills to the contrary. *See generally* 80 Am. Jur. 2d *Wills* § 1399, Westlaw (database updated Nov. 2017). These statutes are typically very old, and apply, by their terms, to probate assets. Thus, some courts have held that they do not guarantee the surviving spouse any share of non-probate assets, such as revocable trusts or insurance proceeds. *See, e.g., Poland v. Nalee (In re Estate of George)*, 265 P.3d 222, 230-31 (Wyo. 2011). In view of the modern trend toward nonprobate transfers, such decisions allow spouses to evade statutory

> share requirements by channeling their assets to nonprobate transfers. To address this problem, numerous States have enacted legislation guaranteeing the surviving spouse a share of the "augmented" estate—defined to include nonprobate assets such as revocable trusts and insurance policies. *See* Sitkoff & Dukeminier, *supra*, at 535 (noting that many States have enacted statutes that "include a list of nonprobate transfers that are added to the probate estate to constitute an *augmented estate* against which the surviving spouse's elective share is applied"); *see also* UPC 2-205(1)(D) (noting that "[p]roceeds of insurance" are included in the augmented estate); *id.*, cmt., para. 1, example 8 (same); Minn. Stat. § 524.2-205(1)(iii) (same). This is classic family-law legislation designed to protect surviving spouses that should fall comfortably within a State's police power, yet under Respondent's position, such statutes would unconstitutionally impair the obligations of the insurer.

Under Petitioners' interpretation of the Contracts Clause, these outcomes do not arise because statutes affecting beneficiary designations do not affect contractual obligations under the Contracts Clause. The Court should follow that intuitive approach.

III. REVOCATION-ON-DIVORCE STATUTES DO NOT IMPAIR CONTRACTUAL OBLIGATIONS; RATHER, THEY CONSTRUE DIVORCE AS AN EXERCISE OF CONTRACTUAL RIGHTS.

In Section II, Petitioners argued that a life insurer's contractual obligation is to give the funds to the beneficiary designated by State law—so statutes affecting beneficiary designations do not impair contractual obligations. But even if the Court concludes that the "obligation" is an obligation to give the funds to the beneficiary *of the policyholder's choice*, revocation-on-divorce statutes still would not impair any obligations. Rather, they merely construe a divorce as an exercise of a policyholder's option to change the designation.

Minnesota's revocation-on-divorce statute supplies a default rule. By its terms, the statute applies only to "revocable" beneficiary designations—that is, beneficiary designations that the policyholder has the right to change. Thus, if the policyholder wants to have his ex-spouse as the beneficiary, all he has to do is re-designate the ex-spouse as the beneficiary.

Thus, *before* the revocation-on-divorce statute's enactment, Mark Sveen had the right to designate the beneficiary of his choice. The same was true *after* the revocation-on-divorce statute's enactment. The insurer's obligation to give the proceeds to the policyholder's selected beneficiary did not change.

Of course, revocation-on-divorce statutes alter the identity of the beneficiary—but the mere change of the

beneficiary's identity is not an impairment of obligations. Consider first the scenario where a policyholder voluntarily changes the beneficiary designation. One would not say that the policyholder impaired the insurer's obligations, in the sense of altering the contract. The policyholder still owns the same insurance policy; he has simply exercised his option to change the beneficiary under that policy.

Likewise, many States provide that if a policyholder makes a good-faith but unsuccessful effort to notify the insurer of a change in beneficiary designation, the policyholder's intent will be effectuated, so long as the insurer is not prejudiced. *See, e.g., Lemke v. Schwarz*, 286 N.W.2d 693, 695 (Minn. 1979) (letter sent to policyholder's daughter sufficient to change beneficiary). If a State enacted legislation codifying that rule, the rule would not be retroactively *impairing* the policy; it would be setting forth the circumstances in which a policyholder's actions are construed as exercising a contractual right he possesses.

Revocation-on-divorce statutes are no different. They treat divorce as an event reflecting the policyholder's intent to revoke the beneficiary designation. They do not impair any obligations; instead, they leave the contract intact, and merely treat divorce as a constructive exercise of the policyholder's contractual right to change the beneficiary.

In this sense, revocation-on-divorce statutes are analogous to pretermitted-child statutes, which apply when a person names his child as the beneficiary in his will, has another child after the will is executed, and never changes the designation. Pretermitted-child

statutes create a presumption that the decedent intended to include after-born children as heirs—which the testator can overcome by amending the will to exclude them. *See, e.g.*, *Coulam v. Doull*, 133 U.S. 216, 230 (1890) ("The statute raises a presumption that the omission to provide for children or grandchildren living when a will is made is the result of forgetfulness, infirmity, or misapprehension, and not of design," but the "statutory presumption of an unexpressed intention to provide may be rebutted"). Historically, pretermitted-child statutes applied only to wills, but some States have extended them to certain nonprobate transfers such as revocable trusts (though not to life insurance policies). *E.g.*, Cal. Prob. Code § 21601.

It would be odd to suggest that such statutes impair the obligations of the trustee. They simply construe the child's birth as reflecting an implicit intent to make the new baby an heir. Revocation-on-divorce statutes are no different—they construe a significant life event (*i.e.*, a divorce) as reflecting an implicit exercise of a contractual right to change the beneficiary.

IV. REVOCATION-ON-DIVORCE STATUTES DO NOT "SUBSTANTIALLY" IMPAIR CONTRACTUAL OBLIGATIONS.

If the Court concludes that revocation-on-divorce statutes impair contractual obligations, it should nonetheless reverse, because that impairment is not substantial. All a policyholder must do to restore his ex-spouse as the beneficiary is send a simple notice to the insurer re-designating that person. A statute imposing such a minimal burden does not violate the Contracts Clause.

A. Only "Substantial" Impairments of Contractual Obligations Violate the Contracts Clause.

This Court has repeatedly held that for a statute to violate the Contracts Clause, it must *substantially* impair contractual obligations. *See General Motors*, 503 U.S. at 186 ("Th[e] inquiry has three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial"); *Energy Reserves*, 459 U.S. at 411 ("The threshold inquiry is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship'") (citation omitted). A statute that merely alters contractual obligations, without a substantial impairment, does not violate the Contracts Clause. *Allied Structural Steel Co. v. Spannaus*, 436 U.S. 234, 245 (1978) ("Minimal alteration of contractual obligations may end the inquiry at its first stage."); *City of El Paso v. Simmons*, 379 U.S. 497, 515 (1965) ("Laws which restrict a party to those gains reasonably to be expected from the contract are not subject to attack under the Contract Clause, notwithstanding that they technically alter an obligation of a contract.").

This well-settled rule is consistent with the text and history of the Contracts Clause. The word "impair" itself implies a degree of substantiality. "Impair" means "lessen, diminish, injure, hurt." *See* Noah Webster, *A Compendious Dictionary of the English Language*, at 151 (Philip B. Grove ed., 1970) (1806). Early cases similarly hold that the Contracts Clause is implicated by statutes that reduce the value of a

contract, rather than statutes that merely alter it. *See, e.g., Green v. Biddle*, 21 U.S. (8 Wheat.) 1, 32 (1823) (characterizing "conditions and restrictions tending to diminish the value and amount of the thing recovered" as posing constitutional concern).

Moreover, "the venerable maxim *de minimis non curat lex* ('the law cares not for trifles') is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." *Wis. Dep't of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992). It is thus consistent with longstanding tradition that for Contracts Clause purposes, an insubstantial impairment is not an impairment at all.

The drafting history of the Contracts Clause supports the view that it excludes statutes that merely alter, rather than impair, the obligations of a contract. The original draft of the Clause, proposed by the Committee of Style, barred the states from "*altering or* impairing the obligation of contracts." 2 *The Records of the Federal Convention of 1787*, at 597 (Max Farrand ed. 1937) (emphasis added). The Convention, however, deleted the words "altering or," thus narrowing the Contracts Clause's coverage to laws "impairing the Obligation of Contracts." *Id.* This history bolsters the view that statutes that merely alter, but do not impair, contractual obligations do not violate the Contracts Clause.

B. Revocation-on-Divorce Statutes Do Not Substantially Impair Contractual Obligations.

As noted in Section III, revocation-on-divorce statutes merely supply a default rule. The default effect of a divorce is to revoke beneficiary designations. But if a person wants to keep an ex-spouse as the beneficiary, all he must do is file a form with the insurer restoring the ex-spouse as the beneficiary.

Thus, the sole effect of Minnesota's statute on Mark Sveen's policy was to provide that in the contingent event of a divorce, he would be required to send a change-of-beneficiary form to his insurer if he wanted to keep his ex-wife as a beneficiary. A long and unbroken line of cases establishes that this minimal burden is not a sufficient "impairment" to implicate the Contracts Clause.

For instance, in *Gilfillan v. Union Canal Co. of Pennsylvania*, 109 U.S. 401 (1883), the legislature passed a statute providing that the failure of a bondholder to signify his refusal to concur in the agreement of a certain settlement would be deemed to be "equivalent to an express assent in writing." *Id.* at 403. The question was whether that statute "impaired the obligation of his bond." *Id.* The Court framed the question as whether it was "unreasonable to provide that a failure to dissent should be taken as an assent." *Id.* at 406. The Court upheld the statute. It explained the policy justifications for the statute, *id.* at 403-05, and pointed out that the burden on the bondholder was minimal: "If he does not wish to abandon his old rights and accept the new, all he has to do is to say so in

writing to the president of the company. Inaction will be taken as conclusive evidence of abandonment, just as the failure to bring suit within the time allowed by a statute of limitation is evidence of the abandonment of an existing cause of action." *Id.* at 406. Similarly, under revocation-on-divorce statutes, if a person prefers maintaining the ex-spouse as a beneficiary, "all he has to do is to say so in writing." *Id.* If he does not, the state construes his "[i]naction ... as conclusive evidence of abandonment" of the designation of his ex-spouse as beneficiary. *Id.* Such statutes should therefore be upheld as well.

This Court has also repeatedly upheld the application of statutory recording requirements to existing contracts. For instance, in *Jackson ex dem. Hart v. Lamphire*, 28 U.S. 280 (1830), this Court rejected a Contracts Clause challenge to a statute requiring the recordation of deeds. In that case, one John Cornelius received a land patent.[7] In 1797—after he received the patent—the New York Legislature enacted a statute stating that if a deed was not recorded, the purchaser would lose priority relative to a subsequent purchaser. Cornelius failed to record the deed, and a subsequent purchaser claimed priority. Cornelius' downstream purchasers argued that the statute violated the Contracts Clause because it retroactively stripped Cornelius of his contractual right to the land patent. This Court disagreed. It explained

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[7] This Court, in its first-ever Contracts Clause case, found land patents to be "contracts" under the Clause. *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810).

that "[t]he state has not by this act impaired the force of the grant; it does not profess or attempt to take the land from the assigns of Cornelius." *Id. at* 289. After explaining the policy interests advanced by recording acts, the Court concluded that State legislatures had the power to enact such statutes "whether the deed is dated before or after the passage of the recording act." *Id.* at 289-90. Thus, "[t]hough the effect of such a law is to render the prior deed fraudulent and void against a subsequent purchaser, it is not a law impairing the obligation of contracts." *Id.* at 290.

Likewise, in *Vance v. Vance*, 108 U.S. 514 (1883), this Court rejected a Contracts Clause challenge to a statute requiring the recording of certain mortgages, as applied to contracts predating the statute. The Court held that the recording requirement was intended to protect the mortgagor, as well as potential third party obligors, and did not "impair" contractual obligations under the Contracts Clause: "[T]he law, in requiring of the owner of this tacit mortgage, for the protection of innocent persons dealing with the obligor, to do this much to secure his own right, and protect those in ignorance of those rights, did not impair the obligation of the contract, since it gave ample time and opportunity to do what was required, and what was eminently just to everybody." *Id.* at 518; *see also Conley v. Barton*, 260 U.S. 677, 681 (1923) (upholding statute requiring existing mortgagees to complete affidavits within three months of foreclosure setting forth certain facts because statute "only imposes a condition, easily complied with, which the law, for its purposes, requires"); *Louisiana v. City of New Orleans*,

102 U.S. 203, 206-07 (1880) (upholding statute requiring the recordation of judgments, even though statute compelled contracting party "to do acts, preliminary to the payment of his judgments, not required when the contracts were made," because statute was a "convenient means of informing the city authorities of the extent of the judgments").

These cases establish that a statutory requirement of filing a document does not unconstitutionally impair contractual obligations, even if the requirement did not exist at the time the contract was signed. Here, too, the fact that Mark Sveen was required to file a new change-of-beneficiary form to restore Respondent as a beneficiary does not unconstitutionally impair contractual obligations.

Indeed, revocation-on-divorce statutes are even less of an impairment to contractual obligations than these recordation statutes. First, the statutory objective of the recordation statutes was to protect third parties, such as innocent future creditors who may be unaware of a mortgage. Here, the statutory objective is to protect the contracting party himself, by vindicating his presumed intent. Invalidating such a statute would be even further removed from the goals of the Contracts Clause, which is to protect the interests of people who sign contracts.

Second, with respect to recordation statutes, the failure to comply with the recordation requirement completely extinguished the contracting party's rights. For instance, in *Jackson*, the failure to record the deed rendered it worthless against a subsequent purchaser. Here, by contrast, the failure to send a writing to the

insurer typically *vindicates* the intent of the policyholder, who is presumed to intend to alter the beneficiary designation upon divorce. And even in those cases where the divorcing spouse does want the ex-spouse to remain on the policy, and is unaware of the revocation-on-divorce statute, the policy is not extinguished. Rather, the funds are redirected to the contingent beneficiaries, which is presumably of some value to the policyholder. In sum, if recordation statutes are constitutional, revocation-on-divorce statutes are as well.

Also on point is *Curtis v. Whitney*, 80 U.S. (13 Wall.) 68 (1871). In the nineteenth century (and still today), in some States, if a landowner was delinquent in the payment of taxes, the State would sell a "certificate of tax-sale" of the land to an investor; if the landowner did not redeem the property by paying off the debt within a specified amount of time, the investor could take possession of the property. In *Curtis*, this Court upheld a statute requiring a holder of a certificate of tax-sale to give notice to possessors of the land before taking the deed, even as applied to existing certificate holders. The Court observed that "[not] every statute which affects the value of a contract impair its obligation. It is one of the contingencies to which parties look now in making a large class of contracts, that they may be affected in many ways by State and National legislation." *Id.* at 70-71. The Court explained that the requirement did not "lessen the binding efficacy of plaintiff's contract," given that the "right to the money or the land remains, and can be enforced whenever the party gives the requisite legal notice."

Id. at 71.

This case presents even less of an "impairment" than the statute in *Curtis*. In *Curtis*, the notice would presumably increase the probability that the landowner would redeem the property—thus reducing the value of the certificate of tax-sale—yet the Court nonetheless upheld the statute. Here, if the policyholder files a change-of-beneficiary form with the insurer, he is returned to the precise situation he occupied before the statute's enactment.

Most recently, in *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), this Court rejected a Contracts Clause challenge to Indiana's Mineral Lapse Act, which provided that certain mineral interests would lapse unless the mineral owner filed a statement of claim in the local county recorder's office. This Court observed that "a mineral owner may safeguard any contractual obligations or rights by filing a statement of claim in the county recorder's office. Such a minimal 'burden' on contractual obligations is not beyond the scope of permissible state action." *Id.* at 531. Likewise here, the minimal burden of filing a change-of-beneficiary form does not constitute a Contracts Clause violation—especially given that the failure to do so does not result in a complete lapse of contractual rights, as in *Texaco*, but a mere redirection of the proceeds to contingent beneficiaries.

C. Revocation-on-Divorce Statutes Do Not Interfere With Reliance Interests—but Invalidating Them Would.

This Court has held that in assessing whether a statute substantially impairs contractual obligations, courts should consider whether it interferes with the parties' expectations at the time of contracting. In *City of El Paso v. Simmons*, 379 U.S. 497 (1965), the Court considered the constitutionality of a statute providing that the right to reinstate forfeited contracts to buy land must be exercised within five years of the forfeiture. Under the prior law, the right to reinstatement was perpetual. The question was whether the new law, limiting the right to reinstatement, could apply retroactively to contracts signed before the law's enactment. The Court upheld the statute. It emphasized that "the promise of reinstatement ... was not the central undertaking of the seller nor the primary consideration for the buyer's undertaking." *Id.* at 514. It "[did] not believe that it can seriously be contended that the buyer was substantially induced to enter into these contracts on the basis of a defeasible right to reinstatement in case of his failure to perform, or that he interpreted that right to be of everlasting effect." *Id.* The Court concluded that "[t]his Court's decisions have never given a law which imposes unforeseen advantages or burdens on a contracting party constitutional immunity against change." *Id.* at 515.

Likewise, it cannot "seriously be contended" that the existing state of divorce law, or the absence of a

revocation-on-divorce statute, was the "central undertaking" or "primary consideration," or that the buyer was "substantially induced to enter into" the life insurance policy based on the state of the law at the time of contracting. *Id.* Indeed, for several reasons, it is unlikely that revocation-on-divorce statutes will interfere with *anyone*'s reliance interests at the time of contracting.

First, few people, when they sign a contract, rely on how that contract will be treated in a hypothetical divorce. This is especially true with respect to life insurance policies—most people who designate their spouse as an insurance beneficiary do so precisely because they do not intend to divorce, but want to support their spouse if they die during the marriage.

Second, even for people sufficiently cynical to be contemplating divorce upon the purchase of a policy, the statute would not interfere with their reliance expectations unless they were both sufficiently expert in the law to be aware that their State did not have a revocation-on-divorce statute, and sufficiently magnanimous to intend for their ex-spouse to remain the beneficiary upon that hypothetical divorce.

Third, even for such cynical, magnanimous legal experts, it is difficult to see how a revocation-on-divorce statute could possibly interfere with settled expectations. Prior to the enactment of Minnesota's statute, a policyholder could not have had any settled expectations on the effect of a hypothetical future divorce on his life insurance policy. As previously noted, *supra* at pp. 17-18, 21-22, even before the enactment of Minnesota's statute, some divorce decrees

revoked beneficiary designations; others forced a policyholder to maintain his ex-spouse as a beneficiary, even without the policyholder's consent. The effect of the divorce decree on the beneficiary designation would turn on future divorce settlement negotiations, or the decision of a future divorce court—neither of which the policyholder could have predicted at the time of contracting.

Indeed, the revocation-on-divorce statute applies only when a divorce decree does *not* address the effect of divorce on the life insurance policy. Few, if any, policyholders plan on having an *ambiguous* divorce decree, or rely on the law's treatment of ambiguous divorce decrees. And even for such policyholders, the interference with reliance expectations is miniscule, because the policyholder need only re-designate his ex-spouse as the beneficiary to restore the original beneficiary designation.

To be sure, revocation-on-divorce statutes enacted *after* divorces could interfere with reliance expectations *at the time of divorce*, if the divorcing spouses leave the decree silent with the assumption that the beneficiary designation stays intact. Of course, even in that scenario, a spouse has the option of mooting the statute's effect by re-designating the ex-spouse as beneficiary. But, it is possible that the spouse may be unaware of the post-divorce enactment of the revocation-on-divorce statute.

To the extent this scenario raises any fairness issues, however, they are not properly analyzed under the Contracts Clause. The Contracts Clause focuses on reliance expectations at the time of contracting, not at

the time of divorce. *El Paso*, 379 U.S. at 514. Moreover, in this case, the revocation-on-divorce statute could not have interfered with expectations at the time of the divorce—because the revocation-on-divorce statute was enacted *before* the divorce.[8]

Even if it were proper to consider disruption of reliance expectations at the time of divorce, rather than at the time of contracting, there is a countervailing concern. The *invalidation* of revocation-on-divorce statutes would likely interfere with reliance interests to a greater extent than the statutes themselves.

Consider matters from the perspective of Mark Sveen. Mark Sveen took his true intentions to the grave, and it is unknown whether he was aware of Minnesota's revocation-on-divorce statute. But for all we know, at the time of his divorce or thereafter, he learned that there was a revocation-on-divorce statute, and declined to change his beneficiary designation precisely because he knew that the statute made the change unnecessary. If so, he would be surprised to learn that his ex-wife is receiving the proceeds based on her vindication of his own purported constitutional rights under the Contracts Clause.

Indeed, an irony of this case is that Respondent and

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[8] Petitioners do not mean to suggest that the application of revocation-on-divorce statutes to divorces occurring before the statute's effective date would violate any *other* provision of the Constitution. Rather, Petitioners' point is that even if this scenario raised fairness concerns, the Contracts Clause would be irrelevant to those concerns, given that it does not distinguish between contracts signed before and after the divorce.

Mark Sveen negotiated and signed a divorce *settlement* which was incorporated into a divorce decree. The effect of Minnesota's statute—which was on the books at the time that settlement was negotiated—was to create a background rule that unless the settlement specified otherwise, the settlement would include an implied term revoking the beneficiary designation. Yet Respondent, who could easily have negotiated a divorce settlement that expressly preserved her status as the beneficiary, instead claims to be vindicating her ex-husband's constitutional right to freedom of contract—at a time when he has no ability to speak for himself.

Or consider matters from the perspective of people still alive today. Many people hire lawyers only once or twice in their lives—for instance, when they get divorced and during estate planning. Those lawyers may have told them that they do not need to change their beneficiary designations in their insurance policies, because of their State's revocation-on-divorce statute. If they do not follow this Court's jurisprudence closely, they may be unaware of a ruling holding that such statutes are unconstitutional as applied to policies predating their enactment, and their true intentions would be thwarted.

These anomalies do not arise in the typical Contracts Clause case; they arise here only because Minnesota's statute operates as a default rule. The Court should uphold the statute on that basis.

V. EVEN IF THEY SUBSTANTIALLY IMPAIR CONTRACTUAL OBLIGATIONS, REVOCATION-ON-DIVORCE STATUTES SERVE A LEGITIMATE PUBLIC PURPOSE.

For over eighty years, this Court has held that even if a statute substantially impairs the obligation of contracts, it is constitutional so long as it is a reasonable measure to pursue a legitimate State end. Revocation-on-divorce statutes easily pass muster under that standard.

A. Revocation-on-Divorce Statutes Easily Satisfy the Modern Reasonableness Test.

The leading modern Contracts Clause case is *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934). *See El Paso*, 379 U.S. at 508 (characterizing *Blaisdell* as "a comprehensive restatement of the principles underlying the application of the Contract Clause"); *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 15 (1977) (characterizing *Blaisdell* as "the leading case in the modern era of Contract Clause interpretation"). In *Blaisdell*, this Court upheld legislation suspending creditors' ability to foreclose on homes. The Court explained that legislation is constitutional under the Contracts Clause—even if it interferes with private contracts—if it "is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end." 290 U.S. at 438.

Energy Reserves Group v. Kansas Power & Light Co., 459 U.S. 400 (1983), sets forth a more detailed

articulation of the legal standard. "The threshold inquiry is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.'" *Id.* at 411 (citation omitted). "If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem." *Id.* at 411-12. "[T]he public purpose need not be addressed to an emergency or temporary situation." *Id.* at 412. "Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption." *Id.* (internal quotation marks and brackets omitted). "Unless the State itself is a contracting party, as is customary in reviewing economic and social regulation, ... courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Id.* at 412-13 (internal quotation marks and brackets omitted).

Under that deferential standard, revocation-on-divorce statutes are constitutional. First, such statutes serve a "significant and legitimate public purpose." *Id.* at 411. Such statutes "derive[] from the recognition 'that when spouses are sufficiently unhappy with each other that they obtain a divorce, neither is likely to want to transfer his or her property to the survivor on death.'" *Stillman*, 343 F.3d at 1318 (citation omitted). Thus, they "'reflect the legislative judgment that when

the transferor leaves unaltered a will or trust or insurance beneficiary designation in favor of an ex-spouse, this failure to designate substitute takers more likely than not represents inattention rather than intention.'" *Id.* (citation omitted). Moreover, even for attentive spouses, revocation-on-divorce statutes save them the time and paperwork of revoking their beneficiary designations by ensuring the revocation occurs automatically. The concept of automatic revocation of a bequest is not a new one—as previously noted, at common law, marriage automatically revoked wills. *Supra*, at pp. 6-7. It was perfectly legitimate for the legislature to extend that principle to divorce and nonprobate transfers.

To be sure, there will be some scenarios in which a person wants his ex-spouse to remain as the beneficiary. But the legislature made the empirical determination that, in the mine run of cases, the statute advances the policyholder's intent. State legislatures are well-situated to make empirical judgments about the typical presumed intent of divorcing spouses, and "[u]nless the State itself is a contracting party ... courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Reserves*, 459 U.S. at 412-13.

Indeed, if vindicating a person's presumed intent was insufficient to uphold a statute under the Contracts Clause, then even "slayer" statutes would be unconstitutional as applied to existing policies. As noted above, "slayer" statutes provide that a person who murders the policyholder cannot receive the proceeds. *See supra* at p. 36. Such statutes are

amended regularly; as noted above, some States have recently expanded their coverage to beneficiaries who commit elder abuse. *Id.* Like revocation-on-divorce statutes, slayer statutes effectuate the policyholder's intent: they reflect the intuitive view that a victim of murder or abuse would not want the perpetrator to receive the proceeds. Yet, under Respondent's view, the statutes would be unconstitutional as applied to policies purchased prior to their enactment or amendment: The killer or abuser could assert his victim's constitutional rights against the impairment of contracts under the Contracts Clause as a mechanism for collecting life insurance proceeds. This result would be exceedingly counterintuitive.

Revocation-on-divorce statutes also serve two other useful functions. First, they ensure parallel treatment of beneficiary designations in wills and insurance policies. Even before the enactment of revocation-on-divorce statutes, an "overwhelming number of states" had "enacted statutes recognizing revocation by divorce" in the context of wills. *Vasconi*, 590 A.2d at 1164; *see supra*, at p. 7. Minnesota was one such State. Minn. Stat. Ann. § 524.2-508 (West 1975). Revocation-on-divorce statutes ensure that existing wills and existing insurance policies are treated the same way. *Supra* Section II.B. Second, as previously noted, revocation-on-divorce statutes avoid litigation on whether ambiguous divorce decrees revoke beneficiary designations. *Supra*, at pp. 18-19. Those purposes are "significant and legitimate." *Energy Reserves*, 459 U.S. at 411.

Revocation-on-divorce statutes are also of a

"'character appropriate to the public purpose justifying the legislation's adoption.'" *Id.* at 412 (citation and brackets omitted). They are mere default rules—in three different respects. First, they yield to an express statement in the insurance policy. Minn. Stat. § 524.2-804, subd. 1 ("Except as provided by the express terms of a governing instrument ... or a plan document"). Second, they yield to an express agreement between the spouses after the insurance policy, either as part of a divorce settlement or any other contract. *Id.* ("Except as provided by the express terms of a ... court order, [or] a contract relating to the division of the marital property made between individuals before or after their marriage, dissolution, or annulment."). Third, because they apply only to "revocable" beneficiary designations, *id.*, they yield to the insurer's choice to re-designate his ex-spouse as the beneficiary. In this sense they are less intrusive than "slayer" statutes, in which the victim obviously has no opportunity to redesignate the original beneficiary. This unobtrusive mechanism of vindicating policyholders' intent is reasonable.

This Court's decision in *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987), underscores why revocation-on-divorce statutes should be upheld. In *Keystone*, this Court held that a statute preventing the enforcement of contractual waivers of liability for mining-related damages did not violate the Contracts Clause. The Court explained that "the prohibition against impairing the obligation of contracts is not to be read literally." *Id.* at 502. It pointed out that the Contracts Clause "was made part of the Constitution to

remedy a particular social evil—the state legislative practice of enacting laws to relieve individuals of their obligations under certain contracts—and thus was intended to prohibit States from adopting as [their] policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them." *Id.* at 503 n.30 (internal quotation marks omitted). Thus, the Contracts Clause's "primary focus was upon legislation that was designed to repudiate or adjust pre-existing debtor-creditor relationships that obligors were unable to satisfy." *Id.* at 503. The Court emphasized that "'the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected.'" *Id.* (citation omitted). The Court concluded that the abrogation of the damages waiver at issue—though a substantial impairment on the right to contract—gave way to the state's "strong public interest" in preventing environmental harm. *Id.* at 505. It also found the impairment "reasonable." *Id.* Applying its standard that "unless the State is itself a contracting party, courts should properly defer to legislative judgment as to the necessity and reasonableness of a particular measure," this Court "refuse[d] to second-guess the [State's] determinations." *Id.* at 505-06.

Under *Keystone*, this case is easy. Revocation-on-divorce statutes do not adjust a pre-existing debtor-creditor relationship or include the State as a

contracting party; thus, a deferential standard applies. Such statutes are vastly less intrusive than the statute upheld in *Keystone*, which completely nullified valuable damages waivers in a manner directly contrary to the parties' intent.

To be clear, revocation-on-divorce statutes are constitutional even without the modern deferential standard of *Blaisdell* and *Keystone*. The cases described in Section IV, *supra*, largely date from the nineteenth century—an era of vigorous enforcement of the Contracts Clause—yet they strongly support the constitutionality of revocation-on-divorce statutes. But the modern standard of *Blaisdell* and *Keystone* leaves no doubt that revocation-on-divorce statutes are constitutional.

B. Revocation-on-Divorce Statutes Present None of the Political Process Concerns Underlying the Contracts Clause.

In *Energy Reserves*, this Court noted that the "requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests." 459 U.S. at 412. For instance, the Court had invalidated legislation under the Contracts Clause that was "aimed at specific employers" and "may have been directed at one particular employer planning to terminate its pension plan when its collective-bargaining agreement expired." *Id.* at 412 n.13.

Similar justifications for the Contracts Clause date back to the Founding. Federalist No. 44 (James

Madison) explains:

> The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society.

The Federalist No. 44, at 288 (Clinton Rossiter ed., 1961).

Thus, without a Contracts Clause, special interests, disappointed by the contracts they signed, would persuade the legislature to extinguish them—reducing the incentive for entering into contracts in the first place.

It is striking how irrelevant that concern is to revocation-on-divorce statutes. *Neither* contracting party would have any interest in persuading the legislature to enact such statutes. The insurer—the party whose obligations are purportedly being

impaired—is indifferent to who gets the proceeds. Policyholders have no reason to petition the legislature—if they want to keep their ex-spouse on the policy, they just have to send a letter to the insurance company. Indeed, neither the policyholder nor the insurer ever actually litigates the constitutionality of revocation-on-divorce statutes—the cases invariably pit the ex-spouses against the contingent beneficiaries, neither of whom signed the contract or have any interest protected by the Contracts Clause. The Court should not extend the Contracts Clause to a circumstance so far removed from the justification for its enactment.

* * *

This brief set forth five independent rationales for upholding revocation-on-divorce statutes. First, they are permissible regulations of divorce. Second, they do not impair contractual obligations, because they affect the donative component of life insurance policies. Third, they do not impair contractual obligations, because they merely construe divorce as the exercise of a contractual option. Fourth, any impairment of an obligation is not substantial. Fifth, even if they cause a substantial impairment, they are reasonable.

Any one of these rationales is independently sufficient to uphold revocation-on-divorce statutes. In fact, all five are correct. The Court should therefore permit Minnesota's revocation-on-divorce statute to apply according to its terms.

CONCLUSION

The judgment of the Eighth Circuit should be reversed.

Respectfully submitted,

DANIEL DODA
DODA MCGEENEY
975 34th Ave. NW
Suite 400
Rochester, MN 55901

ADAM G. UNIKOWSKY
Counsel of Record
JAMES T. DAWSON*
JENNER & BLOCK LLP
1099 New York Ave., NW,
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

CLIFFORD W. BERLOW
JENNER & BLOCK LLP
353 North Clark St
Chicago, IL 60654

* *Not admitted in Washington, D.C. Only admitted in Texas.*